FEEDMEAL MALAYSIA SDN BHD

v.

TEH CHO YEOW & ORS

HIGH COURT MALAYA, MELAKA
LOW HOP BING J
[SUIT NO: 1-22-119-2000]
25 AUGUST 2005

CIVIL PROCEDURE: *Declaration - Locus standi - Plaintiff/creditor seeking declaration that transfer of land by defendant/debtor to his daughters was null and void - Whether plaintiff had locus standi to seek such declaration*

The plaintiff had earlier commenced an action against the 1st defendant, claiming a certain sum of money for goods sold and delivered to the 1st defendant. The Sessions Court gave judgment for the plaintiff and the High Court dismissed the 1st defendant's appeal. Subsequently, the plaintiff transferred a plot of his land in Jasin to his three daughters, namely, the 2nd, 3rd and 4th defendants. Thereafter, the plaintiff brought a second action against the defendants, seeking a declaration that the said transfer of the land was null and void. Before the High Court herein, the defendants sought a determination, by way of an application under O. 14A and O. 33(2) Rules of the High Court 1980, as to whether the plaintiff would have the *locus standi* to bring the said action to have the transfer declared null and void. It was argued that the 2nd, 3rd and 4th defendants had already obtained an indefeasible title to the land by virtue of s. 340(1) National Land Code 1965, and, further, that the plaintiff only had a monetary claim against the 1st defendant and no interest whatsoever in the said land.

Held (dismissing the defendants' application):

[1] The plaintiff – as a creditor of the 1st defendant – had raised a sufficient and special nexus and interest in the subject matter of the action so as to give itself the necessary legal standing to justify the seeking of the declaratory relief. The plaintiff would thus have the *locus standi* to bring and maintain the said action against all the defendants. (pp 1002 a, g & 1003 g)

Case(s) referred to:

EM Buxton & Anor v. Packaging Specialists Sdn Bhd [1987] 1 MLJ 342 HC ***(dist)***

Hiap Yiak Trading Sdn Bhd & Ors v. Gim Hin & Co (M) Sdn Bhd [1989] 2 MLJ 366 HC ***(dist)***

Lee Hock Mee v. Pengarah Jabatan Pengangkutan Jalan Negeri Perak & Ors [2000] 1 CLJ 584 HC ***(refd)***

Reese River Silver Mining Company v. Atwell [1869] LR 347 ***(refd)***

Standard Chartered Bank v. Yap Sing Yoke & Ors [1989] 1 CLJ 530; [1989] 2 CLJ (Rep) 500 HC ***(dist)***

Tan Sri Hj Othman Saat v. Mohamed Ismail [1982] 2 MLJ 177 ***(refd)***

Legislation referred to:

Legal Profession (Practice and Etiquette) Rules 1978, r. 28(a)

National Land Code 1965, s. 340(1)

Rules of the High Court 1980, O. 14A, O. 33 r. 2

Other source(s) referred to:

John Burke, *Jowitt's Dictionary of English Law*, 2nd edn, p 1115

For the plaintiff - ST Lee; M/s ST Lee & Partners

For the defendant - Anthony Chua Yong Giap; M/s HS Lee Chua & Partners

Reported by Gan Peng Chiang

JUDGMENT

Low Hop Bing J:

Applications

Before me are two summonses in chambers *viz*:

1. encl. (69) filed by the plaintiff for an order that pursuant to r. 28(a) of the Legal Profession (Practice and Etiquette) Rules 1978, the firm of solicitors Messrs Yap Koon Roy & Associates be barred from acting for the defendants; and

2. encl. (73) filed by the defendants under O. 14A read with O. 33 r. 2 of the Rules of the High Court 1980 for a determination as to whether the plaintiff has *locus standi* to bring this action against the defendants.

Numerous consequential prayers have been sought by the parties herein but in essence the fundamental prayers set out above would no doubt effectively dispose of their respective applications.

Messrs Yap Koon Roy & Associates

Defendants' application in encl. (73) was originally filed by Messrs Yap Koon Roy & Associates, but written submission has now been filed by another firm of solicitors, Messrs H.S. Lee Chua & Partners, as solicitors for the defendant. This scenario has given rise to the irresistible inference that Messrs Yap Koon Roy & Associates have discharged themselves from acting or have evinced an intention of not desiring to act further as solicitors for the defendants.

In the circumstances, it is clear that plaintiff's application in encl. (69) to bar Messrs Yap Koon Roy & Associates from acting for the defendants had been overtaken by events and would require no further consideration by me.

Factual Background

The plaintiff had on 26 December 1995 caused to be issued a civil action in the Shah Alam sessions court *vide* Summons No. 52-160-1996 against the first defendant for the price of goods ie, feedmeal sold and delivered to the first defendant (D1).

On 19 February 1997, the plaintiff had obtained judgment against D1 in the sessions court. D1's appeal to the Shah Alam High Court had been dismissed.

On 5 August 1996, the land held under GM 168, Lot 242, in the mukim of Chabau, district of Jasin was transferred by D1 to the second, third and fourth defendants (D2, 3 and 4) who are D1's daughters.

On 25 September 2000, the plaintiff commenced the instant action seeking, *inter alia*, a declaration that the transfer is null and void.

Locus Standi

In arguing that the plaintiff has no *locus standi*, defendants' learned counsel Mr. Anthony Chua Yong Giap relied on s. 340(1) of the National Land Code 1965 under which D2, 3 and 4 were said to have obtained indefeasible title to the land, and that the plaintiff's claim against D1 is only monetary, having no interest in the land. The following authorities were cited in support:

1. *E.M. Buxton & Anor. v. Packaging Specialists Sdn. Bhd.* [1987] 1 MLJ 342 HC;
2. *Standard Chartered Bank v. Yap Sing Yoke & Ors* [1989] 1 CLJ 530; [1989] 2 CLJ (Rep) 500 HC; and
3. *Hiap Yiak Trading Sdn Bhd & Ors v. Gim Hin & Co (M) Sdn Bhd* [1989] 2 MLJ 366 HC.

Mr. S.T. Lee, learned counsel for the plaintiff, contended that the plaintiff has *locus standi* on the ground that the sale and purchase transaction between D1 of the one part, and the other defendants of the other part was not *bona fide* and was intended to defraud the plaintiff who is D1's creditor.

Having carefully considered the above submissions, I am of the view that the sole preliminary issue for determination is whether the plaintiff has been clothed with the necessary *locus standi* to bring and maintain this action against all the defendants.

A good starting point is to ascertain the relevance of the authorities cited for the defendants.

First, in *E.M. Buxton, supra*, Siti Norma Yaakob J (now CJ(M)) made it absolutely clear that the only issue before her Ladyship was whether the respondent as purchaser of land had a registrable interest over the land capable of being protected by a caveat. No issue of *locus standi* was ever raised for determination there.

Next, the plaintiff in *Standard Chartered Bank, supra,* sought a declaration, *inter alia*, that the plaintiff's charge in equity and private caveat be duly registered and an order that the writ of seizure and sale be set aside. Nothing turned on the issue of *locus standi* there for Lamin J (later PCA) to decide thereon.

The third and final case concerns the issue of caveatable interest raised in *Hiap Yiak Trading Sdn Bhd, supra,* and, as in the other two authorities, no issue of *locus standi* arose before Eusoff Chin J (later CJ Malaysia).

There can be no doubt in my mind that none of the above authorities can render any assistance to the defendants in pursuing the issue of *locus standi* in their application herein.

Harking back to fundamental principles, it appears to me that a useful purpose would be served by stating that the expression *"locus standi"* means a place to stand on, a legal standing. To say that a person has no *locus standi* means that he has no right to appear or be heard in a proceeding: p. 1115 *Jowitt's Dictionary of English Law*, 2nd edn. by John Burke Vol. 2 (1977).

In addressing the issue of locus standi, I find it instructive to refer to *Tan Sri Haji Othman Saat v. Mohamed bin Ismail* [1982] 2 MLJ 177 where the Federal Court attributed *locus standi* to one Mohamed bin Ismail who was one of the 184 unsuccessful applicants for land as he has an interest in the subject matter of the action in which he alleged that the land in the area had been alienated to a number of people, including the then senior state dignatories and other personages in the upper echelon of the administrative service. His interest was held to be a special or substantial interest in the subject matter of the proceedings therein and that interest was particularly affected, thereby giving him capacity to sue as there could be no justification in debarring him from doing so: per Abdoolcader J (later SCJ) in delivering the judgment of the Federal Court, at pp. 178 and 179.

This Federal Court judgment was followed in *Lee Hock Mee v. Pengarah Jabatan Pengangkutan Jalan Negeri Perak & Ors* [2000] 1 CLJ 584 by Clement Skinner JC (now J) who held that where the plaintiff's application for renewal of a road vehicle licence was refused by the defendant on the ground that he had an outstanding traffic offence, the plaintiff has an interest in the subject matter of the action so as to justify his seeking relief.

The question of locus standi in the sense of an entitlement to sue was raised in *Reese River Silver Mining Company v. Atwell* [1869] LR 347. There, a settlor, Atwell, was the chairman of Reese River Silver Mining Company ("the company"). Atwell, *inter alia*, had authorised the payment of a sum of £6,000 out of the company's funds. The company was subsequently wound-up. The official liquidator then took out a summons to examine Atwell's authorisation of the said payment, so as to order Atwell to refund and repay to the assets of the company. Atwell consulted his legal adviser and conveyed away his property for the benefit of his children, reserving power for the trustees to pay him such part of the income as they might think fit. Lord Romilly held, *inter alia*, that even in the absence of any lien or charging order on the property, the company was entitled to sue Atwell.

Reverting to the factual background on the basis of the affidavits filed herein, it is my specific finding that the plaintiff as the creditor of D1 has raised a sufficient and special nexus and interest in the subject matter of the action so as to give the necessary legal standing to justify the seeking of the declaratory relief. In essence, he has *locus standi* to bring and maintain this action against all the defendants.

Merits Of Plaintiff's Claim

At this stage of the interlocutory application, the issue of *locus standi* is a mere preliminary issue. In arriving at the answer as stated above, it is not appropriate for me to embark upon the consideration of the merits of the plaintiff's claim, which would revolve around two other issues *viz* the *bona fide* of the transaction between D1 the father and the other 3 defendants, the daughters, and secondly whether that was effected with intention to defraud the plaintiff as D1's creditor. That can only be resolved by reference to a mature consideration of *viva voce* evidence which in turn must be tested through the process of cross-examination and re-examination at the full trial.

Conclusion

The defendants' application in enclosure (73) seeking to negate the plaintiff's *locus standi* is without substance and is therefore dismissed with costs.